REMARKS

Applicant traverses the rejections of record and requests reconsideration and withdrawal of such in view of the remarks and amendments contained herein. Claims 35, 85 and 88 have been amended. Claims 35-47 and 49-96 are pending in this application.

Interview Summary

Applicant thanks the Examiner for his time on the afternoon of February 8, 2007. Applicant met with Examiner and discussed the aspect of the present application which Applicant regards as the invention and the distinctions between the claimed subject matter and the cited prior art. No agreement was reached with regard to the claimed subject matter.

Rejection Under 35 U.S.C. § 103(a) (Gokcen)

Claims 35-44 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,125,024 to Gokcen et al (hereinafter "Gokcen").

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art cited must teach or suggest all the claim elements. *See* M.P.E.P. § 2143. Without conceding that the first second criteria are satisfied, Applicant respectfully asserts that the Examiner's rejection fails to satisfy at least the third criteria.

Lack of all Limitations

Claim 35, as amended, requires receiving a signal including a captured sample of a media stream from the user, the media stream comprising music, determining from the signal a characteristic of the captured sample determining the identity of the captured sample using the signal characteristic, and triggering a predetermined transaction with the user involving the music identified in the captured sample. As has been previously described by Applicant, Gokcen merely teaches receiving a user voice command at a speech recognizer that responds to the received command by prompting a voice response unit to initiate further procedures

with a user. see Gokcen col. 5 line 60- col. 6 line 5. As such, Gokcen does not teach several aspects of claim 35.

First, claim 35, as amended, requires triggering a predetermined transaction with the user involving the music identified in the captured sample. As Gokcen describes a voice response unit, Gokcen is able to identify spoken words and perform commands associated with those spoken words. Abstract. The transactions executed by Gokcen, however, do not involve the spoken words or music in claim 35, as required by the current claim. Instead the spoken words of Gokcen are merely commands to take some predefined action. Instead of using the identity of the captured sample as merely a command to take a predefined action, claim 35 requires that transaction "involve the music identified in the captured sample." This is clearly not described by Gokcen.

Next, the Examiner admits that Gokcen does not teach a media stream comprising music, but instead states "official notice is hereby taken that it is obvious to one skilled in the art that since voice (an audible signal) is decipherable by Gokcen's design, that music (an audible signal) can also be decipherable by Gokcen's design, for the purpose of recognizing (audible) customer commands (claim 1, Gokcen)." Office Action, page 3.

As before, Applicant respectfully traverses the Examiner's "official notice." Applicant is unaware of any integrated voice response (IVR) system that can identify music, and the Examiner is apparently unable to find any reference to IVR systems recognizing anything but a small set of voice commands as is described by Gokcen. Further, as will be described below with respect to Pocock, existing music identification techniques which postdate Gokcen use voice response systems, but are unable to identify music from a captured sample. Applicant respectfully requests that the Examiner provide any basis for the official notice that IVR systems must be capable of recognizing music.

In response to Applicant's previous request for the Examiner to provide a basis for his "official notice" the Examiner has stated, first, that Gokcen does not teach IVR (integrated *voice response*). Applicant would respectfully direct the Examiner to the title of Gokcen which is "*Voice Response* Unit" (emphasis added).

Second, the Examiner states that both voice and music are audible signals and the Gokcen reference teaches how an audible signal can be recognized. Applicant respectfully disagrees with the Examiner's characterization. Gokcen does not teach how *audible* signals can be recognized, but rather how predefined speech commands can be recognized. See, Figure 3 and column 5, lines 8-19 and 39-45. Applicant would respectfully point out that neither the word "audible", nor the phrase "audible signal" appear in the Gokcen reference. As Gokcen does not teach how audible signals can be recognized as asserted by the Examiner, the Examiner's characterization of voice and music as equivalent "audible signals" is improper.

Third, the Examiner cites the non-patent literature titled "The Listening Phone" as teaching how speech is captured and that the speech can be longer than one syllable. Applicant has never contended that Gokcen or any other voice response system is limited to one syllable words. Applicant merely contends that voice identification and music identification are dramatically different and voice is merely a simplified case of identification of audible signals that cannot be equated to the complex case of music identification. The Examiner's insistence that speech recognition be equated to music recognition is akin to stating that knowledge of addition is the same as knowledge of complex calculus, the two simply cannot be equated. The Examiner is again requested to provide support for the "official notice" or withdraw the rejection.

As Gokcen does not teach a transaction involving the music identified in the captured sample. Nor is the Examiner's citation of voice/speech recognition is not equivalent to determining the identity of a captured sample of a media stream where the media stream comprises music, as is required by claim 35, Gokcen, even as modified by the Examiner does not teach all the limitations of claim 35. Applicant respectfully asserts that claim 35 is in condition for allowance.

Lack of Motivation

The Examiner has modified Gokcen to extend Gokcen's description of voice/speech recognition to the recognition of music. However, the Examiner has not provided any motivation supporting the proposed modification. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art

also suggests the desirability of the combination. M.P.E.P. § 2143.01 (citing *In re Mills*, 916 F.2d 680, (Fed. Cir. 1990)). Thus, the lack of motivation provided by the Examiner is improper, as the Examiner must establish the desirability for making the modification.

As the rejection of claims 35-44 lack any statement of motivation as required under § 103, Applicant respectfully asserts that the rejection is improper and should be withdrawn.

Claims 36-44 depend from claim 35 and inherit each claim element therefrom. As such, claims 36-44 set forth elements not taught by Gokcen. Therefore, claims 36-44 are patentable at least for the reasons set forth above with respect to claim 35.

Rejection Under 35 U.S.C. § 103(a) (Gokcen in view of Pocock)

Claims 45-96 are rejected under 35 U.S.C. §103(a) as being unpatentable over Gokcen in view of U.S. Patent No. 5,661,787 to Pocock (hereinafter "Pocock").

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art cited must teach or suggest all the claim elements. *See* M.P.E.P. § 2143. Without conceding that the first second criteria are satisfied, Applicant respectfully asserts that the Examiner's rejection fails to satisfy at least the third criteria.

Lack of All Claim Limitations

Claim 47 recites "receiving a signal including a captured sample of the music from the user; wherein the music is received by the user via radio broadcast and the captured sample includes a sample of the radio broadcast." The Examiner cites Gokcen as disclosing a design for a voice (captured sample) response unit used to decipher voice commands. The Examiner takes official notice that it would have been obvious to one skilled in the art to place a telephone receiver next to a radio to retrieve audible signals.

Applicant would again remind the Examiner that Gokcen does not teach or describe identifying audible signals, but only identification of voice/speech commands. As a result, Gokcen does not describe captured samples of music as required by claim 47.

Further, Gokcen does not teach identifying music from a captured sample as required by claim 47. The Examiner's attempt to extend Gokcen to identifying music for a user is inappropriate and not supported by any evidence as described above with reference to claim 35.

Pocock is not relied upon as teaching a captured sample of music, and in fact teaches an entirely different mechanism for identifying music from a radio station. Pocock describes a system that allows radio broadcast users to use a telephone to connect to a database that contains prerecorded audio descriptions of material played on a radio station. Abstract. The database is indexed by the radio station's play list to allow the user to select a particular audio description of interest. Abstract. When a user hears a particular song that they want more information about, the user calls a designated telephone number advertised by the radio station which is specific to that radio station. Column 2, lines 48-63.

A telephone interface provides the listener with the name of the musical artist and the song titles in the reverse order played during the broadcast, starting with the current piece played. *Id.* The selection, from the current artist played, to the music product the potential purchaser wants to order, is controlled by the potential purchaser using the touch tone telephone keys or voice input. *Id.* When the potential purchaser reaches the song and artist of interest, further details can be related such as the other songs recorded on the album, pricing, availability and delivery information. *Id.* Pocock does not describe comparing a characteristic of a captured sample of music to identity records in a database. Instead Pocock relies upon the play list of the radio station indexed according to the time of the call.

As neither Gokcen, nor Pocock describe capturing a sample of music from a user, determining a characteristic of the captured sample and locating an identity record corresponding to the captured sample, the rejection of record does not describe all the limitations of claim 47 as required under §103.

Claims 85 and 88 recite a method for identifying music to a user exposed to a broadcast that includes unidentified music, comprising receiving a signal including a captured sample of the broadcast from the user, said broadcast comprising music. As shown above with respect to claims 35 and 47, Gokcen does not teach or suggest receiving a signal including a captured sample of the broadcast from the user said broadcast comprising music as recited in claims 85 and 88. Moreover, Pocock is not relied upon to teach or suggest this missing element. As such, the Examiner's proposed combination fails to teach or suggest each element of Applicant's invention. Further, for the reasons set forth with respect to claim 47, there is no motivation to combine Pocock with Gokcen as Pocock already includes all of the functionality described by Gokcen. Therefore, Applicant requests withdrawal of the 35 U.S.C. 103(a) rejection of record.

<u>Lack of Motivation</u>

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. M.P.E.P. § 2143.01 (citing *In re Mills*, 916 F.2d 680, (Fed. Cir. 1990)). Thus, the lack of motivation provided by the Examiner is improper, as the Examiner must establish the desirability for making the modification.

The Examiner has again failed to provide any motivation for modifying Gokcen to identify music. As the Examiner does not provide any motivation for his modifications to Gokcen, those modifications are improper under § 103.

Further, the Examiner's proposed combination of Gokcen and Pocock is improper. The Examiner has combined Gokcen with Pocock stating that Gokcen does not provide for a music database which can be searched to find a product match for the user. The Examiner cites Pocock as teaching a design for a phone based, music based and music related items purchasing design which allows a user to search through songs. The Examiner states that it would have been obvious to combine the teachings of Gokcen and Pocock to provide an automated transaction system to record and track radio audio segments enabling a radio listener to use their telephone to recall and preview on demand music pieces previously broadcast.

In order to combine references there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings. M.P.E.P. § 2143. Applicant respectfully asserts that there is no motivation to combine Gokcen with Pocock, as Pocock already teaches using an integrated voice response (IVR) system with all the functionality of Gokcen. Gokcen's IVR system allows a user to navigate a menu using voice commands in response to a voice prompt. Abstract. Pocock describes exactly the same IVR functionality. For example, column 2, lines 56-60 describe a user interacting with the system using voice commands. Similarly, column 7, lines 10-14 describes a user inputting data to the system "by voice into a section of the telephone interface that recognizes spoken numbers and words through voice recognition."

As Pocock already describes the same functionality as Gokcen there would be no motivation to combine the references as required by § 103 and M.P.E.P. § 2143. Applicant respectfully asserts that claims 45-96 are, therefore, allowable over the rejection of record.

Claims 49-84 depend from claim 47 and thereby inherit each element therefrom. As shown above, the combination of Gokcen and Pocock fails to teach or suggest receiving a signal including a captured sample of the music from the user; wherein the music is received by the user via radio broadcast and the captured sample includes a sample of the radio broadcast as recited in claim 47, nor is there any motivation in either Gokcen or Pocock to make the combination suggested by the Examiner. As such, claims 49-84 set forth elements not taught or suggested by the Examiner's proposed combination, and there is no motivation to combine the references. Therefore, claims 49-84 are patentable at least for the reasons set forth above with respect to claim 47. Applicant requests withdrawal of the 35 U.S.C. 103(a) rejection of record.

Claims 86-87 and 89-96 depend from claims 85 and 88, respectively, and thereby inherit each element therefrom. As shown above, the combination of Gokcen and Pocock fails to teach or suggest each element of claims 85 and 88. As such, claims 86-87 and 89-96 set forth elements not taught or suggested by the Examiner's proposed combination. Therefore, claims 86-87 and 89-96 are patentable at least for the reasons set forth above with

respect to claims 85 and 88. Applicant requests withdrawal of the 35 U.S.C. 103(a) rejection of record.

Conclusion

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant is paying a fee for a one month extension with this response. Applicant believes that no additional fees are required. However, if an additional fee is due, please charge Deposit Account No. 06-2380, under Order No. 69323/P002US/10511081 from which the undersigned is authorized to draw.

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I hereby certify that this document is being transmitted to the Patent and Trademark Office via electronic filing.

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Respectfully submitted,

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